IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.70/2000

Iswar Dutt

Versus

State & Ors.

DATE OF ORDER :: 30/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. R.P. Vijay, for petitioner
Mr. Arun Sharma, P.P.
Mr. S.K. Jain, for respondents

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Instant petition has been filed assailing the order dated 27th October, 1998 whereby Revisional Court accepted the revision petition filed by accused-non-petitioner No.2 u/s.197 Cr.P.C. and set aside the order of learned trial Judge dated 11th February, 1997.

The facts, which are necessary for consideration in the present misc. petition, are that an FIR No.95/86 was registered at Police Station, Indergarh for offence u/ss.147, 149, 332, 353, 365 & 327 IPC against accused-petitioner at the instance of Kailash Chand, Junior Engineer and on account of which present petitioner was taken into custody on 28th June, 1986 and in the midnight the respondent No.2 who was at the relevant time was posted as SHO Police Station along with two other co-accused started

beating the petitioner by stick and certain blank papers under threat were also got signed by him. After he was released on bail on 30th June, 1986, a complaint was made against the accused-non-petitioner and other co-accused at the Police Station, Indergarh of the alleged incident took place with him. After recording his statement and of other witnesses u/ss.200 & 202 Cr.P.C., learned Magistrate took cognizance against accused-non-petitioner No.2 and other co-accused and notices were issued to them. On their appearance, they denied charges and claimed to be tried. It is to be mentioned at this stage infact three accused which were named by petitioner in his report two out of the same namely; Shri Shyamlal and Shri Ramdayal they have not preferred any revision petition against the order of learned trial Judge. It has been brought to the notice of this court that after facing regular trial, both the accused named Shyamlal and Ramdayal have been acquitted by the competent court of jurisdiction under order dated 30th May, 2000.

So far as the present accused-non-petitioner No.2 is concerned, he filed an application u/s.197 Cr.P.C. after trial commences on the premise that he being public servant, learned trial Judge was not competent to take cognizance against him without seeking prior sanction from the State Government who is his employer which

was rejected by learned trial Judge – against which he preferred revision petition and the Court while examining under revisional jurisdiction, particularly, in regard to 197 Cr.P.C. examined the merits of allegation levelled against accused-non-petitioner and finally recorded finding that no case of such nature is made out against him and consequently, set aside the order of learned trial Judge.

The basic bone of contention of counsel for petitioner is that court was not competent to examine the scope of allegation levelled while examining the application filed by accused-non-petitioner u/s.197 Cr.P.C. and only fact which was required to be looked into was as to whether his act was in discharge of official duty or not and learned trial Judge recorded finding while holding that since the act as referred to by petitioner in his report of which cognizance was taken in no manner can be said to be an act of accused-non-petitioner in discharge of his official duty. In such circumstances, the Revisional Court has committed a gross manifest error in passing order impugned dated 27th October, 1998.

Counsel for respondents and so also learned Public Prosecutor while supporting the order impugned, submit that once a regular trial has been faced by other two co-accused and they have

been finally acquitted by competent court of jurisdiction vide order dated 30th May, 2000, no purpose in change circumstances is going to serve in asking the accused-non-petitioner to face the trial, moreso, when the incident is of 1986 and he has already retired from service long back in such circumstances it will cause great prejudice to him.

I have heard counsel for parties and perused the order impugned.

This fact cannot be ruled out that learned trial Judge examined the scope of Section 197 Cr.P.C. and recorded finding that the offence as alleged by petitioner in his complaint cannot be said to be act of the accused was in discharge of his official duty, as such there was no requirement under law to take prior sanction from the competent authority provided u/s.197 Cr.P.C. and this court after looking the record certainly comes to the conclusion that Revisional Court has committed an error in passing order dated 27th October, 1998. The allegation was read over to the accused-non-petitioners they have denied the same and asked to face trial and pending trial application was filed and only fact to be examined was as to whether the prior sanction of competent authority provided u/s.197 Cr.P.C. was required in the facts of instant case while taking cognizance of the offence, but learned

Court of Revision examined the entire material and recorded finding holding that no offence is made out against accused which certainly was not required for him to look into.

But, the latter development which has taken place during pendency of misc. petition about the other co-accused being acquitted by competent court of jurisdiction vide order dated 30th June, 2000 after regular trial and the present accused non-petitioner and co-accused were in the same pedestal and once they have been acquitted, no purpose otherwise will be served in calling upon him to face trial, particularly, when he has been retired from service long back and the alleged incident is of June, 1986 more than 21 years have been rolled by now. In such circumstances, this court is of the opinion that no purpose is going to be served if he is called upon to face prosecution at this stage.

Consequently, in these circumstances, this court does not find any justification to interfere in the instant petition, the same is, accordingly, dismissed. Record be sent back to trial court forthwith.

[AJAY RASTOGI],J.